



February 11, 2002

Updated Action Plan for the Review of Pacific Salmon & Steelhead ESA Listings and Hatchery Policy

Introduction

The *Alsea Valley Alliance v. Evans* decision (*Alsea* decision) has led the National Marine Fisheries Service (NMFS) to reevaluate how it treats hatchery fish in Endangered Species Act (ESA) listing determinations. Although the U.S. Court of Appeals for the Ninth Circuit granted intervenors-appellants an emergency motion to stay the judgement in the *Alsea* decision, thus reinstating Oregon Coast coho as a threatened species under the ESA, the interpretive issue raised by the *Alsea* decision has the potential to affect nearly all of the agency's West Coast salmon and steelhead listing determinations made to date.

During September and October of 2001, NMFS received six petitions to delist 15 Evolutionarily Significant Units (ESUs) of Pacific salmon and steelhead. In a *Federal Register* notice published on February 11, 2002, NMFS issued its determinations of whether to accept these petitions. Furthermore, NMFS reaffirmed its commitment to review its policy on the treatment of hatchery salmon populations in ESA status reviews and listing determinations, as well as to issue interim recovery planning targets in support of regional, state, local and tribal recovery efforts.

The *Federal Register* notice announced and reaffirmed the following:

(1) Petition Findings and Reinitiation of Status Reviews – In light of the *Alsea* decision, NMFS determined that five of the six delisting petitions highlight pertinent ESA interpretive issues for currently listed ESUs of Pacific salmon and steelhead with hatchery populations. NMFS finds that these petitions present substantial scientific and commercial information to suggest that the petitioned actions may be warranted for 14 of the 15 petitioned ESUs. Accordingly, NMFS will initiate status review updates for these ESUs. Moreover, NMFS elects to update the status of 11 additional ESUs that include hatchery populations.

(2) New Policy for Hatchery Populations Under the ESA – The above mentioned status updates will be completed after a revision of the agency's policy regarding the consideration of hatchery fish in ESA status reviews and listing determinations for Pacific salmon and steelhead. In conjunction with the new policy, NMFS will also issue guidelines for using hatchery populations to accelerate recovery, and operating hatcheries over the long term to assure that artificial propagation of salmon stocks will not undermine recovery efforts under the ESA.

(3) Interim Recovery Planning Targets – In support of regional, state, tribal and local planning efforts NMFS will provide interim estimates of recovery planning targets. These targets, and the plans that address them, should also help to reduce the uncertainty, and the costs associated with such uncertainty, that would otherwise occur for affected landowners and other stakeholders.

(1) Petition Findings and Reinitiation of Status Reviews

Schedule:

The status reviews for the 25 Pacific salmon and steelhead ESUs to be reviewed will be completed as soon as possible following the publication of a new hatchery policy (see (2) below).

Public Input and Comment:

The February 11, 2002 *Federal Register* notice opened a 60-day comment period. To ensure that the status review updates are complete and are based on the best available and most recent scientific and commercial data, NMFS is soliciting information and comments concerning the 25 ESUs to be reviewed.

Summary:

The *Alsea* decision called into question NMFS' policy of excluding hatchery populations from listing protection even though they were determined to be part of the same ESU as listed naturally-spawned populations. While this ruling affected only one ESU, the interpretive issue raised by the ruling has the potential to affect nearly all of the agency's West Coast salmon and steelhead listing determinations made to date.

In light the *Alsea* decision, five of the six delisting petitions highlight relevant ESA interpretive issues for ESUs containing unlisted hatchery fish. These five petitions suggest review may be warranted for 14 of the 15 petitioned ESUs. In addition, NMFS will update the status of 11 additional ESUs containing hatchery fish. These coastwide status reviews will encompass 24 of the 26 currently listed salmon and steelhead ESUs, as well as the Lower Columbia River/Southwestern Washington coho ESU.

Listing decisions will be made consistent with the new artificial propagation policy, discussed below.

(2) New Policy for Hatchery Populations Under the ESA

Schedule:

NMFS will present several alternatives for the new hatchery policy in a notice to be published in spring 2002 in the *Federal Register*. The new hatchery policy is scheduled to be completed by September 2002.

Public Input and Comment:

The *Federal Register* notice to be published this spring will open a 60-day comment period, which will include public hearings.

Summary:

The *Alsea* decision leads NMFS to reevaluate how hatchery populations are considered in ESA listing determinations. NMFS will propose several alternative approaches to a new policy for hatchery populations under the ESA. The new policy will supersede the agency's interim policy on hatchery populations that was published in the *Federal Register* on April 5, 1993 (58 FR 17573). The new policy is intended to more clearly articulate how NMFS will consider

hatchery salmon in evaluating the risk of extinction for Pacific salmon and steelhead ESUs, and in making subsequent listing determinations under the ESA. The new hatchery policy will ensure (consistent with the *Alsea* decision) that when the agency lists an ESU, it lists the entire ESU – whether it includes hatchery populations, naturally spawned populations, or both. The new policy will also give consideration to the potential of some hatchery populations to mitigate short-term extinction risk when it makes a determination about the natural sustainability of an ESU.

Along with the new policy for hatchery populations in ESA status reviews and listing decisions, NMFS will also issue guidelines for using hatchery populations to accelerate recovery, and operating hatcheries over the long term to assure that artificial propagation of salmon stocks will not undermine recovery efforts under the ESA.

(3) Interim Recovery Planning Targets

Schedule:

NMFS intends to provide Interim Targets for all listed salmon and steelhead ESUs by Spring 2002.

Public Input and Comment:

These interim targets will be updated and refined as more scientific information is made available. This refinement process will involve and encourage input and comment from stakeholders and comanagers. However, so that NMFS can quickly issue these interim targets in support of current and ongoing recovery planning efforts, the drafting of the initial interim recovery planning targets may not include comprehensive review by stakeholders and comanagers.

Summary:

NMFS will provide interim estimates of recovery planning targets to help stimulate recovery efforts, and to help recovery planners size the effort needed to recover the species. The interim recovery planning targets will be interim goals, utilizing biological "rules of thumb" (e.g., the population abundance or productivity values maintained over a specified time frame that are necessary for population viability in a given subbasin). These targets are not intended to compete with or supersede the more scientifically-rigorous final recovery goals. Rather, these targets are provided as a matter of policy to assist regional, state, tribal, and local recovery planning efforts until they are replaced by the recovery goals derived through the formal recovery planning processes. NMFS intends these interim targets to encourage local involvement in establishing the final recovery goals through the Technical Recovery Team and formal recovery planning process.